RF 14-9-94
MH. 24
before Hon Dubey J.

(18) (17)

IN THE HIGH COURT OF JUDICATURE, MADHYA PRADESH

JABALPUR

MISC. PETITION No. 4420/93

(I.A No. _____ OF 94)

PETITIONER: .. Y.C RAJWAR
S/o Hari Chand,
Aged about 27 years,
at present posted as
Sub Inspector, C.I.S.F,
B.C.C.L, (Ram Krishnapur)
Distt. Adilabad,
(A.P)

V E R S U S

RESPONDENTS:

1. The Commandant,
C.I.S.F., B.S.P,
Bhilai, Distt.Durg.MP

2. The Commandant,
Central Industrial
Security Force, CISF Unit,
KSTPP Korba,
Post Prgatinagar,
Distt. Bilaspur, MP

3. The Dy. Inspector General,
Central Industrial Security
Force, Western Zone, Bomabay.

4. The Dy. Inspector General,
Central Industrial Security
Force, South Zone,
Annanagar East, Madrass-102.

7853
22-8-94
Shri Sanjay Nayar
Advocate
R. to D.G.
22-8-94

(APPLICATION FOR VACATION OF STAY)
PAGE NO.1 TO 3

XI-HC-22

(72)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P. No. 4420/1993

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

21/3/2001

Heard Mr. Manindra Shrivastava, learned counsel for the petitioner & Shri A.S. Gaharwar, learned counsel for the respondents.

O R D E R

Show cause notice issued to the writ petitioner on 3/8/1993 (Annexure P/5) has been impugned in this petition mainly on the ground that the same is hit by Rule 49(1) framed under the Central Industrial Security Force Rules, 1969. Rule 49(1) may be extracted;

> "Revision-(1)- Any authority superior to the authority making the order may, suo motu, if it considers necessary, revise an order, original or appellate, passed by such lower authority which comes to his notice within a period of one year from the date of the order".

Relevant facts may be stated briefly: An inquiry was initiated against the writ petitioner in a case involving ~~loss of~~ theft of some property. Charges were issued to the writ petitioner on 17/3/1990. Enquiry was conducted. Mr. Manindra Shrivastava, learned counsel for the petitioner states at the Bar that in fact a criminal case was also registered, ~~however, in~~ Mr. Gaharwar states that the said

[पीछे देखिये

आदेश पत्रक (पुर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

said criminal case was in respect of another matter. Be that as it may, the fact is that in the departmental inquiry in respect of some articles of charges, the petitioner was found guilty and he was awarded punishment of "Reduction of pay by two stages from Rs.1600/- to Rs.1520/- in the time scale of pay for a period of two years with effect from the date of issue of this order. It is further directed that no.8712013 SI/EXe Y.C.Rajwar will not earn increment of pay during the period of reduction and that no expiry of this period, the reduction will have the effect of postponing his future increments of pay" vide para 14 of the order issued by the Commandant CISF Unit, KSTPP, Korba. Being aggrieved by the said order of punishment, the writ petitioner submitted an appeal before the Appellate Authority, D.I.G., Central C.I.S.F, South Zone. It may be stated that during the pendency of the appeal, the show cause notice referred to above came to be issued to the writ petitioner.

Mr. Manindra Shrivastava, learned counsel for the petitioner states at the Bar that as on this day ~~the~~ No appeal is pending before the Appellate Authority as the same was withdrawn. On the other hand, Mr. A.S. Gaharwar, learned counsel for the respondents

(43)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(RB)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

states that the appeal was withdrawn but only after submitting a reply to the show cause. Learned counsel for the petitioner submits that since the petitioner is questioning the jurisdiction of the Appellate Authority in issuing show cause notice under Rule 49(1), there is nothing that shall stand in the way of the writ petitioner approaching this Court for exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. This submission has been made on the basis that if the requirement of exercising the power of revision is to be taken recourse to under Rule 49(1), such could have been done only within a period of one year from the date of the order of punishment was issued. Apparently, the show cause noticewas issued after the period of limitation contemplated under Rule 49(1) as stated above. Relevant for the purpose of ~~The relevant facts to~~ determination of the present issue are paras 3 & 4 of the impugned show cause notice which are extracted in extenso:

> "3- And whereas the said SI/Exe being aggrieved by the orders of disciplinary authority preferred an appeal to the DIG/WZ, Bombay. In the

[पीछे देखिये]

आदेश पत्रक (पुर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

meanwhile the appellant has been transferred from CISF Unit KSTPP Korba to CISF Unit SCCL, Singrani (AP) South Zone. Hence, I have carefully gone through the contents of appeal and and examined the case file relating to award of punishment and find that the quantum of punishment does not commensyrate with the gravity of misconduct committed by the appellant;

4)- I, therefore, in exercise of power conferred under Rule 49(1) of CISF Rules,1969 hereby call upon No.8712013 SI/EXe Y.C.Rajwar to show cause why the punishment of "Reduction of pay by two stages from Rs.1600/- to Rs.1520/- for two years with cumulative effect" should not be enhanced to that of "Removal from Service". He is further directed to submit his representation against the proposed penalty within seven days of receipt of this notice, failing which it will be presumed that he has nothing to submit and ex parte decision will be taken against him".

In para no.4, the exercise of power is sought clearly to be under Rule 49(1) of CISF Rules 1969. For the purpose of gravity, it may be stated at this stage that according to the respondents, the Appellate Authority meant to exercise power under Rule 47 and not under Rule 49(1). Rule 47 contemplates consideration of the case. In this regard, Mr. A.S. Gaharwar, learned counsel for the sespondents submits that while exercising the Appellate Authority, the Appellate Authority is fully justified in issuing notice for enhancement of punishment. In other words, Mr. A.S. Gaharwar

GRPRJ—FS/311—1/2001—50,000.

(74)

(78)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... बिरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

submits that Rule 49(1) of the Rules 1969 had been incorporated through clerical mistake while issuing show cause notice. Mr. Manindra Shrivastava, learned counsel for the petitioner submits that the show causenotice was issued clearly for the purpose of exercise of powere under Rule 49(1) of the said Rules of 1969 and no explanation need ~~to~~ be accepted subsequently which is sought to be done in the present case. It appears that no further show cause notice clarifying certain provisions of law earlier incorporated was issued to writ petitioner. As on this day, para 4 of the impugned show cause notice is in operation. It must be borne in mind that the ~~xxx~~ merits of the case have to be examined on the basis of the show cause notice and not beyond ~~any part of~~ it.

Mr. A.S. Gaharwar, learned counsel for the respondents further submits that the Appellate Authority should be allowed to examine even the plea of the writ petitioner as regards the ~~xx~~ show cause notice for enhanced punishment of removal from service and the petitioner should place his case before the Appellate Authority and that this Court may not close the entire matter in the present

[पीछे देखिये

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

writ petition.

I have carefully considered the submission of Mr. A.S. Gaharwar. I am faced with one difficulty. As I have stated earlier the show cause notice is clearly under exercise of power conferred under Rule 49(1) of CISF Rules 1969. If that be so, the impugned show cause notice was issued beyond the period of one year. In my view on this score the impugned notice should go. Even otherwise, I am of the opinion that since the writ petitioner has already undergone the punishment vide order dated 4/7/1992, the belated attempt to enhance the punishment and that too in exercise of powers conferred under Rule 49(1) of the said Rules 1969, is not called for.

In the result, this petition is allowed. The impugned show cause notice dated 3/8/1993 is quashed.

Sd/-
Chief Justice

GRPRJ—FS/311—1/2001—50,000.